Supreme Court, U.S.
FILED
OCT 2 < 2001
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No. 01-1252

IN THE
SUPREME COURT OF THE UNITED STATES

Donald Lyons
Petitioner

vs.

Sacramento County Department of Health and Human Services,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

PETITION FOR CERTIORARI

Donald Lyons
2446 Camino Park Court
Carmichael, CA 95608
(916) 201-9666

26pp

QUESTONS PRESENTED

May a State financially obligate a parent for State services provided when removing and maintaining a child from his/her parental custody, where it can be shown that the initial detention and jurisdictional findings are the product of extrinsic fraud committed by State agents.

PARTIES TO THE PROCEEDINGS

Petitioner: Donald L., Father of the minor children
Respondent: Sacramento County Department of Health and Human Services
Real party in interest: Deedra, and Danielle L., minor children

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PETITOIN FOR WRIT OF CERTIORARI

Petitioner, Donald Lyons, acting in pro per, respectfully prays that a writ of Ceriorari issue to review a judgment of the Court of Appeal of the State of California, Third District, filed in the above proceedings, attached hereto as Appendix A and B

OPINIONS BELOW

The first opinion by the Third District Court of Appeal affirmed the judgment of the Sacramento County Juvenile Court, attached as APPENDIX A and B, review denied by the California Supreme Court, attached as APPENDIX C.

QUESTONS PRESENTED FOR REVIEW

May a State financially obligate a parent for State services provided when removing and maintaining a child from his/her parental custody, where it can be shown that the initial detention and jurisdictional findings are the product of extrinsic fraud committed by State agents.

JURISDICTON

The jurisdiction of this Court to review the judgment of the Third District Court of Appeal of the State of California is invoked under 28 U.S.C. section 1257, subdivision (a), and Supreme Court Rules 10(1)(b) and 10(1)(c).

DATE OF ENTRY OF JUDGMENT

The California Supreme Court denied review of this matter on July 25, 2001.

STATUTES INVOLVED

California Welfare & Institutions Code § 366.21(e) (in relevant part)

§ 366.21. Status review hearings... (e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her

parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided.

California Welfare & Institutions Code § 388 (in relevant part)

(a) Any parent or other person having an interest in a child who is a dependent child of the juvenile court or the child himself or herself through a properly appointed guardian may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court or in which a guardianship was ordered pursuant to Section 360 for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition shall be verified and, if made by a person other than the child, shall state the petitioner's relationship to or interest in the child and shall set forth in concise language any change of circumstance or new evidence which are alleged to require the change of order or termination of jurisdiction.

California Welfare & Institutions Code § 903.3

(a) The father, mother, spouse, or other person liable for the support of a minor person, the person himself or herself if he or she is an adult, or the estates of those persons shall, unless indigent, be liable for the cost to the county for any investigation related to the sealing and for the sealing of any juvenile court or arrest records pursuant to Section 781 pertaining to that person. The liability of those persons and estates shall be a joint and several liability.
(b) In the event a petition is filed for an order sealing a record, the

father, mother, spouse, or other person liable for the support of a minor, that person if he or she is an adult, or the estate of that person, may be required to reimburse the county for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred twenty dollars ($120). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section.

The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services. (c) Notwithstanding subdivision (a), the father, mother, spouse, or other person liable for the support of the minor, the person himself or herself if he or she is an adult, the estate of that person, or the estate of the minor, shall not be liable for the costs described in this section if a petition to declare the minor a dependent child of the court pursuant to Section 300 is dismissed at or before the jurisdictional hearing.

CONSTITUTIONAL PROVISIONS AT ISSUE

U.S. Constitution, Amendment XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On **March 10, 1999**, the minors Deedra L. and Danielle L. were detained pursuant to a Welfare and Institutions Code § 300 (a), (b), (d), (g), (j).[1]

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[1] Any further references to statute are to Welfare and Institutions Code unless otherwise specified.

On **March 12, 1999**, a detention petition was filed by Sacramento Department of Health and Human Services[2]

A detention hearing was held on **March 15, 1999**, and the minors were ordered detained and DHHS was appointed as the Guardian Ad Litem.

Prior to the detention hearing DHHS knew the minor (DEEDRA) had fabricated a story to the alleged physical abuse to Lynn McCormick, an investigative social worker, who had previously investigated possible abuse based on said fabricated story.

Between the detention and jurisdiction hearings, Appellant submitted substantial evidence that Deedra had fabricated stories. This evidence included declarations of disinterested persons to whom the minor had admitted having lied to DHSS, which is conclusive to what the minor had told Lynn McCormick, and was consistent with other collateral evidence, including police evidence.

On **April 12, 1999**, a combined Jurisdictional/dispositional report was filed, relying on the above noted facts, resulting in an order removing the children from parental custody.

Soon after detention, jurisdiction/disposition hearings, Petitioner began in his attempts to set aside the original jurisdictional findings through several procedural vehicles, on the basis that the jurisdictional/dispositional findings and orders were based on false facts and misrepresentations which the social workers knew or should have known to be untrue. These attempts include the following:

On **May 21, 1999**, Petitioner filed a motion for reconsideration pursuant to **§252** (Providing for Rehearing by a Superior Court judge of findings/orders of a juvenile court commissioner). A supplement to the **§252** motion was filed on **June 11, 1999**. The **§252** motion was denied on July 6, 1999.

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[2] Hereafter referred to as DHSS.

Petitioner filed PETITION FOR WRIT OF HABEAS CORPUS challenging jurisdiction on **June 11, 1999**, requesting the release of the minors based on several challenged issues, which was continued on the courts own motion on three occasions, denied on September 13, 1999.

In an attempt to compel the trial court to hear the petition for WRIT OF HABEAS CORPUS, petitioner filed a motion for IMMEDIATE HEARING ON HABEAS CORPUS on **June 21, 1999**. The record is silent and does not reflect any answer to this motion.

On **June 21, 1999**, Appellant filed a request for discovery, **ordered resubmitted August 30, 1999**, referred to the presiding judge on **September 22, 1999**, granted in part on **October 18, 1999**, denying the most material evidence requested, denying Petitioner crucial evidence needed (at the time) to set aside jurisdiction.

Petitioner filed many other pleas for discovery that were denied or ignored, or denied. And other motions, requests and petitions that were left unanswered, ignored, or denied.

Motion in opposition to social workers placement recommendation filed October 4, 1999, ignored.

Motion to correct the jurisdictional orders, left unanswered. Supplemental motion to correct the jurisdictional orders, another silent record. Motion to relieve minor's counsel, denied. Request for mandatory judicial notice filed **October 3, 2000**, answered but Petitioner was not notified. Judicial challenge for cause, denied. Supplemental judicial challenge for cause, denied. Rebuttal and impeachment of referee, denied. Rebuttal and impeachment on the court's answer, denied. Motion In Limine, ignored.

September 15, 2000, Petitioner filed a **§388** petition challenging the original jurisdictional findings/orders, and a supplement thereto on **October 3, 2000**, denied without a hearing or any explanation.

DHHS filed a report for 18-Month review, where a DHSS social worker described an incident where petitioner is alleged to have

"yelled inside of the restaurant, chased the social worker and child out of the restaurant to the social workers car, and trying to break the car window in an attempt to get to his daughter. This would have shifted the burden to petitioner at the upcoming 18-Month review hearing that return of his child to parental custody would not be detrimental to the child [Pursuant to §366.21(e)]. Under the circumstance, petitioner would have been unable to meet this burden of proof, and a §366.26 Permanency Planning Hearing would have been set where petitioners' parental rights would be terminated, the establishment of guardianship, or

long term foster care, with a legislative presumption that adoption is in the childs best interest.

Prior to the 18-Month review hearing, the minor wrote a letter to the court **[SEE APPENDIX E AND APPENDIX D FOR SIMILAR LETTER]**, explaining, with regards to the above restaurant incident, "Rosie" [The social worker] "exaggerated", and "I want to come to the court without my stories". The entire incident was a fabrication advanced by the social worker to be used against petitioner at trial.

As a result of the minor's letter, the minor was returned to parental custody, and the minor was ordered to attend therapy. At therapy the minor has admitted that she has lied from the beginning, for her mother (non-custodial parent) because her mother had indicated if she did she could come to live with the mother [Substantiated in the trial court records]. This is precisely what petitioner had claimed in his denied attempts to set aside jurisdiction (above), which is consistent with the evidence DHSS had in its possession prior to the initial removal and at all subsequent hearings.

The dependency has been dismissed in this case, based on the above facts. Prior to dismissal, petitioner filed yet another **§388** (fourth of four) petition to set aside the original jurisdictional/dispositional findings and orders, denied on the basis that the dependency was going to be dismissed, and the court would not have jurisdiction to grant the relief requested. Petitioner appealed the denial to consider the **§388.**

The Court of Appeal denied the appeal, claiming the issues raised were moot because the dependency was dismissed, and petitioners' children were no longer in State custody.

Petitioner sought reconsideration based on the issues raised in this petition, that the potential for the State to deny petitioner of property without due process of law was at issue, and therefore the appeal was not moot.

The court of appeal disagreed, finding that vacating the initial jurisdictional findings would not, under California law, relieve petitioner of his financial obligations to the State for their services, notwithstanding any ability to prove they were provided as a consequence of extrinsic fraud by the state against the family in violation of the families rights of association guaranteed under the of First Amendment of the United States Constitution.

REASONS THIS PETITION SHOULD BE GRANTED

A. The issues presented are important.

- One in 5 children in foster care in the United States reside in California. [Testimony of Judge Leonard Edwards before the Select Committee on Juvenile Justice, December 18, 1999, at p. 3]
- One in 56 of all children residing in Sacramento County are in foster care [Sacramento Bee, County still facing foster care scrutiny, June 24, 2001, at p. A20]
- This number does not include the number adopted already through the system

Third District Court of Appeal has noted "... a disturbing trend in Sacramento County..." in denying Welfare & Institutions Code §388 Petitions (The statutory vehicle for setting aside original jurisdictional findings/orders in California Dependency cases on the basis of extrinsic fraud), and characterized the Sacramento judiciary in dependency proceedings, as "a conveyer belt to adoptions". [In re Daijah T. (2000) 83 Cal.App.4th 666]

In other words, the Sacramento County Dependency court

system is not operated in a manner that is likely to be fair and just, and parents are too often denied due process of law.

This court system is where the State makes decisions affecting families, where an erroneous decision to remove a child from parental custody can cause irreparable emotional damage to children and their parents. It is appalling that this status quo is maintained.

Now, according to the California Third Appellate District Court of Appeal, the devastation does not end here.

Aside from the financial obligations to the State [Welf. & Inst. Code §903], a parent may have his/her driving privlidges revoked. In Petitioners case, his independent contractor license in the construction industry may be revoked. Petitioner would be broke, without the means to provide for his family.

This petitioner seeks relief on the basis of due process violations (the taking of property without due process of law) and because the Third Appellate District's decision are repulsive (to the extreme) to the demands of a free society.

These concerns aside, the Third District's decision has failed to consider the effect of vacating a judgment for extrinsic fraud. That is to say that judgements are subject to be set aside on the basis of extrinsic fraud long after a judgment is final for the simple reason that the elements of due process are absent from such proceedings.

If the judgment is vacated for want of the elements of due process, can the state treat the judgment valid for the purpose of holding its citizens in debt to the State?

Common sense says no.

IX.
CONCLUSION

Petitioner's only request is for a ruling the issues raised in his State appeal are not moot because the Third District Court of Appeal decision provides for the taking of property without due process of law. This provides Petitioner the opportunity to exonerate his name. And, in the event that the original jurisdictional findings are vacated, to avoid indebtedness to the State.

APPENDIX A

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
THIRD APPELLATE DISTRICT

FILED
May 11 2001
COURT OF APPEAL- THIRD
APPELLATE DISTRICT
DEENA C. TRUJILLO, Clerk
By _____ Deputy

In re Deedra L., a
Person Coming under the Juvenile Court Law.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,
Plaintiff and Respondent,

v.

DONALD L.
Defendant and Appellant.

C037029
Sacramento County
No. JD213054

BY THE COURT:

Respondents request for judicial notice as to Exhibit A is granted and denies as to Exhibit B.

The Appeal is dismissed by the court's own motion because the appeal is moot.

Dated: May 11, 2001 Simms , Acting P.J.

APPENDIX B

NOT TO BE PUBLISHED

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
THIRD APPELLATE DISTRICT

In re Deedra L., a Person Coming under the Juvenile Court Law.	FILED May 11 2001 COURT OF APPEAL- THIRD APPELLATE DISTRICT DEENA C. TRUJILLO, Clerk By _____ Deputy
DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. DONALD L. Defendant and Appellant.	C037029 Sacramento County No. JD213054

THE COURT:

On May 11, 2001, this court dismissed the appeal of appellang Donald Lyons as moot because the dependency case has been terminated and custody of the minor has been returned to appellant.

Appellant petitions for rehearing. He argues the case is not moot because he may be financially obligated for care of the minor and for attorney fees, pursuant to Welfare and Institutions Code sections 903 and 903.1. (Further Statutory references are to the Welfare and Institutions Code.)

Subdivision (d) of Section 903 provides: "Notwithstanding subdivision (a), the father, mother, spouse, or other person liable for the support of the minor, the estate of that person, or the estate of the minor, shall not be liable for the costs of any of the legal services provided to any person described in this section if a petition to declare the minor a dependent child of the court pursuant to Section 300 is dismissed at or before the *jurisdiction hearing.* (Italics added.)

In the present case, the petition was not dismissed at or before the jurisdictional hearing. Rather, following the jurisdictional hearing on April 12, 1999, the juvenile court found the allegations of the petition true. Because the petition was not dismissed at or before the jurisdictional hearing, appellant cannot take advantage of the exceptions for financial responsibility set out in subdivision (d) of Section 903 or in subdivision (b) of section 903.1. Nothing in appellants appeal (which challenges the denial or subsequent section 388 petitions) can alter this result.

Appeal is moot.

The petition for rehearing is denied.

For the Court:

SIMS, Acting P.J.

DAVIS, J.

APPENDIX C

Court of Appeal, Third Appellate District – No C037029

S098450

IN THE SUPREME COUR OF CALIFORNIA

En Banc

In re DEEDRA L., a Person Coming Under the Juvenile Court Law.

DEPARTMENT OF HEALTH AND HUMANB SERVICES, Plaintiff and Respondent,

v. Donald L., Defendant and Appellant.	SUPREME COURT FILED July 25 2001 Frefrick K. Ohlrich Clerk _____ Deputy

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Petion for review DENIED.

Brown J., was absent and did not participate.

GEORGE

Chief Justice

APPENDIX D

My name is Danielle Lyons and I want to tell how CPS and all the people that are paid by them have treated me. It all started when a false report was made by my mother, (who has no right to be called one) she lied about my Dad and got my sister to go along. For one thing, I have only seen her twice in my life that I can remember so she has had had no part in mine or my sisters life. The second time I remember seeing her she tried to get Deedra and me to run away to her house in Indiana. But I didn't really know her, and I knew it would be wrong to run away from my Dad. I was 14 at the time, but Deedra was just turning 13, and she liked the idea of doing whatever she wanted at moms house. Since then, I felt as if my mom and her family have been mad at me because I didn't go along with her idea. She told us how when she was 13 she left her dad and went to go live with her mom and I guess Deedra thought she should do that too. After that my sister kept telling people that my Dad had hurt her and she told them things that we all knew were not true. I seemed like every time the people she was talking to would call CPS and they would come to our house, and each time the police would come too, but not at the same time. They would find out that we were O.K., and then talk to us for a while and then leave. I remember one time that a social worker lectured my sister about lying to the school nurse and lying to her the first time she came over because she came over twice.

I knew that my mom and Deedra were talking on the phone with some phone cards she gave us but I didn't tell my Dad. I did not know until later that Deedra was also saying stuff about me that wasn't true. It seemed like my little sister that I had know my whole life was turning into a different person. She was sneaking out her window at night and drinking. One time the cops brought her home at about 3 in the morning drunk and vomiting on herself. Me and my Dad were shocked because we woke up by hearing the phone and we didn't even know she was gone. I couldn't believe at the time I caught her with a joint in her hand at the skating rink, but I didn't tell anybody. But I did tell my grandma when I found out she had been shoplifting because I didn't know how to tell my Dad.

It seemed like CPS all of a sudden stepped in and ruined my life on March 10, 1999. A cop came to my school the day after 2 cops already came and left my house. It was lunch time and all the kids seen me with the cops and wondered what was going on. I was so embarrassed. I asked what she was doing there and she told me I was going with her to somewhere safe. I wanted to call my Dad and she told me that I couldn't and that someone else would call and tell him. I told her I didn't want to go anywhere but she said I had to. When I arrived at the receiving home I sat out in the front area for about 3 hours until someone finally called me in to talk me. After about the 4th hour I was put in a room with a bed and I asked to speak to someone so that I could use the phone. They ignored me until around 8 P.M. They told me that I had no case yet, and that I couldn't use the phone until I went to court. I went there on a Wednsday, and I didn't go to court until the following Monday. After court I still didn't get a phone or a visiting list, and I still couldn't use the phone. I got a phone list 2 weeks later, and that was soon taken away again. I felt like I was being punished because I had to ask to even use the bathroom all day long. When I received a social worker her name was Sally Henry. I told her that my sister and my mother had been lying and what they were

saying wasn't true. I felt that she didn't listen to anything I had to say there. And nobody else has either until recently. They told me that if my sister was lying, she would have to go to Juvenile Hall, and I think that is maybe why she has been afraid to tell the truth since we got into this mess and she just doesn't know how to get out of it. I felt like a broken record repeating myself over and over again and defending myself against their rude remarks. Instead of them helping me and defending me, I was defending myself. It seemed like every time I would tell what really happened, or say "that never happened", my report was left out or mixed around. CPS people try to pretend to be a friend to me, but luckily I saw through that and have seen what they are really made of which isn't very friendly. One of the reasons I am writing this letter is because I am tired of CPS people or anybody associated with CPS. I feel like I am speaking to myself and no one cares what I say anyways. If I say something to Lisa Hlavay she mixes it up or says something I didn't say. I don't let people speak for me especially if it is something I didn't say.

This has been going on for almost a year and a half and none of these counselors or lawyers or CPS workers or even the judge are helping my sister to come home. I feel she's really mixed up and nobody is helping her. That's why I'm so tired of all these CPS people acting like they are trying to help when they are keeping us apart from each other instead of helping our family get back together. I remember when I was in the receiving home they told me that they were my family now and I told them that they would never be my family. But I guess that my sister believed them. I was trying to go to counseling and visit my sister or anything else they wanted so that my sister could come home, but none of them wanted to hear what I had to say. I'm worried about my sister because I feel like the CPS workers give her anything she wants so that she won't want to come home, and I don't know why they do that. All I know is that I miss my sister and I wish someone would help us get back together ! (Emphasis in the original)

I declare under the penalty of perjury and the laws of the State of California that the foregoing is true and correct.

s/_____ 7/31/00

Danielle E. Lyons Date

APPENDIX E

My name is Deedra Lyons and I am writing you this letter because I want to go home. All this time I have been gone from home the social workers have told me that it was up to me if I want to go home and now when I want to go home they say I can't. I also told the social worker that I wanna see my sister but, they would not allow me to see her without them there. I told them I didn't need them to watch us and that we were fine so they never set up visitations. It seems to me that when I did not want to see my Dad or my sister they made sure it did not happen and would even put me in protective custody, but when I wanted to see them and go home where I belong they said I can't. I also asked to visit my cousins but they told me not right now or we will make an appointment but, I never saw them once. I can't understand why they don't want me to see my family. Another question I have is why no one ever tells me what's gone on in court ? I didn't even know I had a lawyer for over a year or who he was until I had to be at court (the trial). Neither he or the social worker explained to me what was happening and I never saw court papers except for the first hearing and at the hearing in October that I was at this year, When I read some stuff in there that was not true about my father – like the social worker said my father yelled in the restaurant which is not true. It also said that my dad chased and tried to grab me which was not the truth either. Also, he did not try to break the window of the van. Rosie and I exaggerated but, I wanna come to court without my exaggerated stories. I know that there is a court date on December 14, 2000, and I want to be there. I told my sister and Dad that I never tried to commit suicide – I never did, the reason I said that was for attention. I want my family and my life back.

Deedra

P.S. I asked my Aunt Cindy to type this up for me. My Sister told me she wrote you a letter and it helped her come home so I am writing one too.

I declare under Penalty of Perjury and the laws of the State of California that the foregoing is true and correct.

11/26/00 s/_____

Deedra M. Lyons